

FILED

OCT 13 2007

BEFORE THE DISCIPLINARY COMMISSION OF THE
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)
MICHAEL AARON,)
Bar No. 013730)
RESPONDENT)

No 06-0083

DISCIPLINARY COMMISSION
REPORT

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on September 15, 2007, pursuant to Rule 58, Ariz R Sup Ct, for consideration of the Hearing Officer's Report filed July 10, 2007, recommending acceptance of the Tender of Admissions and the Agreement for Discipline by Consent (Tender) and the Joint Memorandum (Joint Memorandum) in Support of Agreement for Discipline by Consent providing for censure and costs. On September 14, 2007, Respondent filed a Supplement to the Record to support the presence of mitigating factor 9 32(g), character or reputation

Decision

Eight members of the Disciplinary Commission by a majority of seven¹ recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions of law, and recommendation for censure and costs of these disciplinary proceedings²

Discussion of Decision

In June 2003, Respondent employed a legal assistant in his firm. Beginning on or about October 8, 2003, Respondent engaged in a personal relationship with his legal

¹ Commissioner Todd was opposed. See dissenting opinion below.

² A copy of the Hearing Officer's Report is attached as Exhibit A. Respondent has since completed three hours of continuing legal education in the area of conflicts.

assistant Thereafter on October 23, 2003, Respondent filed a Petition for Dissolution of
1 Marriage on her behalf as Petitioner, in Pima County Superior Court, No D-20033886
2 The Petition contained custody terms that were not favorable to her husband, Mr
3 Gorman³ Ultimately, the Court awarded Petitioner sole custody, as the husband failed to
4 file a Response to the Petition

5 After the divorce was final, Respondent represented the husband in an unrelated
6 debt collection matter That representation was limited to a drafting a single debt
7 collection letter, however, Respondent acknowledges that he failed to obtain the necessary
8 written consent from both parties

9
10 The husband now alleges that Respondent was representing both parties in the
11 dissolution However, Respondent sent a letter to husband along with the original Petition
12 for Dissolution and Acceptance of Service advising him to obtain his own attorney if he
13 had any questions Although the husband denies receiving that letter, he admits receiving
14 a copy of the Petition which clearly identifies Respondent as counsel for wife (petitioner)⁴
15 In addition, the State Bar does not dispute Respondent's assertion that similar letters were
16 sent to the husband in October, November and December 2003 The record also reflects
17 that husband was familiar with dissolution proceedings as he was previously divorced and
18 in that action each spouse was represented by separate counsel

19
20 The Dissent, nonetheless, argues that husband's factual allegations raised serious
21 factual allegations which should have been resolved through an evidentiary hearing rather
22

23
24
25 ³ The Petition provided that if Respondent fails to complete a parent education class, fails to pay
26 filing fees, or fails to sign the joint custody plan, Petitioner should be awarded sole custody and
Respondent would have reasonable rights of visitation

⁴ The Commission takes judicial notice of the Petition filed in Pima County Superior Court on
October 23, 2003

1 than a conditional tender That argument ignores the respective roles of a Complainant
2 such as husband, and the Bar in these proceedings "The Complainant is not a party to
3 discipline, disability or reinstatement proceedings" Ariz R Sup Ct 52(a) The Bar,
4 however, is a party and is subject to the requirements of Ariz R Civ P 11(a) See Ariz
5 R Sup Ct 47(a)(2) (incorporating requirements of, among others, Rule 11(a) Rule 11(a)
6 obligates the Bar to continually reassess the validity of the claims it asserts as the facts of
7 the case develop through discovery and the litigation process See *Standage v Jaburg &*
8 *Wilk, P C*, 177 Ariz 221, 866 P 2d 889 (App 1993), *Gilbert v Board of Medical*
9 *Examiners*, 155 Ariz 169, 745 P 2d 617 (App 1987)

10 It is no answer to suggest, as the Dissent does, that factual disputes between the
11 Complainant and the Respondent can best be resolved through an evidentiary hearing The
12 Bar has an independent duty to re-evaluate the merits of the claims it is asserting as new
13 evidence develops Abandoning a claim it no longer believes it can prove is not only
14 appropriate, it is required In this case, the Bar concluded, after filing the Complaint, that
15 it would not be able to prove clear and convincing evidence its contention that Respondent
16 was jointly representing both husband and wife in the dissolution proceedings Such
17 decisions are properly left to the parties (the Bar and Respondent), not the Commission

18 The Commission historically gives great deference to hearing officer
19 recommendations *Matter of Petrie*, 154 Ariz 295, 742 P 2d 796 (1987) Particularly
20 when questions of credibility are involved, great weight and consideration are given to the
21 factual findings of the hearing officer *In re Hoover*, 155 Ariz 192, 196, 745 P 2d 939, 943
22 (1987) The State Bar no longer disputes Respondent's version of the events As noted,
23
24
25
26

1 husband admits that he did receive a copy of the Petition to Dissolution, which clearly
2 indicated that Respondent was representing only the wife (petitioner) in the Dissolution

3 The Commission's standard of review is set forth in Rule 58(b), which states that it
4 applies a clearly erroneous standard to findings and reviews questions of law *de novo*
5 Having found no facts clearly erroneous, the Commission agrees that clear and convincing
6 evidence is present that Respondent violated ERs 1 7 (conflict of interest) and 4 3 (dealing
7 with unrepresented person)

8 Respondent did not undertake reasonable efforts to correct Mr Gorman's
9 misunderstanding in the marriage dissolution proceedings Respondent acknowledges a
10 conflict in representing his legal assistant which affected his ability to appropriately advise
11 her about ongoing visitation issues and acknowledges that he had a conflict in representing
12 the Petitioner in the dissolution matter while representing the husband in the debt
13 collection matter
14

15 The American Bar Associations' *Standards for Imposing Lawyer Sanctions*
16 ("*Standards*") is the guideline used by the Supreme Court in consideration of an appropriate
17 sanction *Matter of Kaplan* 179 Ariz 175, 877 P 2d 274 (1994)

18 *Standard* 4 33 Failure to Avoid Conflicts of Interests provides that

19 Censure is generally appropriate when a lawyer is negligent
20 in determining whether the representation of a client may be
21 materially affected by the lawyer's own interests, or whether
22 the representation will adversely affect another client, and
causes injury or potential injury

23 The Hearing Officer found that Respondent negligently engaged in a conflict of
24 interest causing injury or potential injury That finding was not clearly erroneous Censure
25 is therefore the presumptive sanction in this case
26

1 There were two aggravating factors present *Standard 9 22(a)*, prior discipline and
2 *Standard 9 22(i)*, substantial experience in the practice of law Although the Hearing
3 Officer's Report summary states there was only one mitigating factor, Report at 12, it
4 actually finds three *Standard 9 32(m)*, remoteness of prior offenses, *Standard 9 32(g)*,
5 character or reputation, and *Standard 9 32(e)*, full and free disclosure The Dissent argues
6 the prior discipline precludes a finding of good character in this case But Respondent's
7 prior discipline was a censure imposed in 1996, over ten years ago, for conduct unrelated
8 to the issues presented here The parties and the Hearing Officer, therefore, properly gave
9 it little weight In contrast, the eight letters of support from lawyers and a marriage/family
10 therapist Respondent filed in support of the Conditional Tender are current and fully
11 support the inclusion of character and reputation as a mitigating factor

12 In reviewing the cases cited for proportionality, the Commission agrees that
13 censure is within the range of reasonable sanctions for similar misconduct The Agreement
14 fulfills the purposes of discipline which are to protect the public and deter similar conduct
15 by other lawyers, *Matter of Kersting*, 151 Ariz 171, 726 P 2d 587 (1986), instill public
16 confidence in the bar's integrity, *Matter of Horwitz*, 180 Ariz 20, 29, 881 P 2d 352, 362
17 (1994), and maintain the integrity of the legal system, *In re Fioramonti*, 176 Ariz 182,
18 187, 859 P 2d 1315, 1320 (1993)

19
20 RESPECTFULLY SUBMITTED this 16th day of October, 2007

21
22
23 
24 J Conrad Baran, Chair
25 Disciplinary Commission
26

Commissioner Todd dissenting:

1 The Commission accepted the Tender of Admissions and Agreement for Consent
2 proffered by the parties calling for a public censure. I respectfully dissent because of the
3 serious nature of the charges in the Complaint, the multitude of factual disputes in the
4 record, and the lack of information of the victim's position concerning this Agreement. No
5 hearing was held on the Agreement, and on this Record, I do not find the Agreement
6 comports with justice. The matter should be remanded for a hearing on the Complaint.

8 The allegations in the Complaint are serious. In June 2003, Respondent Michael
9 Aaron employed a female legal assistant. In October 2003, they commenced a sexual
10 relationship that continued until the Spring of 2006.

11 After the commencement of the sexual relationship, Aaron filed a Petition for
12 Dissolution of Marriage on behalf of his legal assistant and her husband. According to the
13 Complaint, the husband believed Aaron was representing both his Wife and himself.
14 Aaron disputes this asserting that because the husband had been represented by an attorney
15 in a prior divorce, the husband was familiar with the process, and Aaron had sent the
16 husband letters in October, November, and December 2003 explaining that he was only
17 representing the wife. The husband denies ever receiving such letters.

19 If the husband truly believed that Aaron was representing both he and his wife, it
20 would explain his failure to file a response to the Petition and to pay an appearance fee.
21 This failure to pay an appearance fee resulted in his wife receiving sole custody of their
22 son, instead of joint custody. Aaron's relationship with the wife would certainly be a
23 motive to obtain sole custody of the son for his lover.
24
25
26

1 Complicating the situation further is the fact that while representing the wife in the
2 disillusionment proceedings, Aaron represented the husband in at least one debt collection
3 matter, the subject of this Agreement for discipline

4 It is undisputed that Aaron never disclosed his sexual relationship to the husband
5 during the 2004 proceedings that resulted in the lost of custody According to the
6 Complaint, it was not until after the court awarded sole custody to his former wife, not
7 until March 2005, that the husband learned of the sexual relationship

8 The assertion in the Agreement and the Hearing Officer's Report that Aaron's
9 "character and excellent reputation in the community is one of honesty and
10 trustworthiness," is troubling on this record First, the uncontested facts concerning his
11 undisclosed relationship with the wife belie his trustworthiness Second, the hearing
12 officer in Aaron's prior 1996 disciplinary matter expressly found Aaron's testimony not
13 credible
14

15 This is not to say that Aaron's position in this matter might be correct and the
16 husband might be untruthful However, in my view, the allegations are serious enough—
17 the lost of custody of one's son—to seek the truth by way of an evidentiary hearing
18


19 Original filed with the Disciplinary Clerk
20 this 15th day of October, 2007

21 Copy of the foregoing mailed
22 this 15th day of October, 2007, to

23 Dwight M. Whitley, Jr
24 Hearing Officer 9I
25 *Dwight M. Whitley, P.L.L.C.*
1670 East River Road, Suite 250
Tucson, AZ 85718-5834
26

1 Cheryl K Copperstone
2 Respondent's Counsel
3 252 West Ina Road, Suite 203
4 Tucson, AZ 85704-6249

5 Shauna R. Miller
6 Senior Bar Counsel
7 State Bar of Arizona
8 4201 North 24th Street, Suite 200
9 Phoenix, AZ 85016-6288

10 by 

11 /mps